UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,413	06/21/2001	Benjamin Ball	9289-7	7645

20792 7590 09/26/2003

MYERS BIGEL SIBLEY & SAJOVEC
PO BOX 37428
RALEIGH, NC 27627

EXAMINER
MATHEW, FENN C

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/886,413	BALL ET AL.	
	Examiner	Art Unit	
	Fenn C Mathew	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 May 2001* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 3, 6-8, 10, 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huang (U.S. 5,547,444). Referring to claim 1, Huang discloses a frame 910), a seat assembly (21), a movement arm (44) pivotally attached to the frame and movable along a stroke path between a forward and rearward position, a resistance imparting unit (60) operatively connected to the movement arm, a pair of handles (sleeves on arms in fig. 1), a pair of extension members (54) attached to the handles so that the handles may rotate longitudinally, (handles are sleeves which can rotate), wherein the extension members are attached to the movement arm such that each extension member is free to at least partially rotate relative the movement arm in a vertical longitudinal, and transverse axes, and the extension members are of sufficient length and the extension members are attached to the movement arm so that the handles can be separated by a distance. Huang does not disclose the exact distance that the handles can be spread apart, however in figure 4, Huang teaches that the extension members may be rotated apart. It appears that the arms are capable of

moving apart at least 24 inches. The feature of having the handles distanced 24 inches is a design consideration.

3. Referring to claim 3, Huang discloses the claimed invention except for the exact length of the extension members, however, Huang illustrates the extension arm roughly half the length of the user, which would inherently place the extension members in the length range of 8 to 48 inches.

4. Referring to claim 6, Huang discloses a unit that varies the resistance imparted to the exerciser along the stroke path (resistance increases as user moves since band is stretched).

5. Referring to claim 7, Huang discloses a four bar linkage that varies the resistance (including movement arm, resistance band, and (41, 47).

6. Referring to claim 8, Huang discloses a swing link (271) pivotally connecting the linkage to the frame.

7. Referring to claim 10, Huang discloses a frame 910), a seat assembly (21), a movement arm (44) pivotally attached to the frame and movable along a stroke path between a forward and rearward position, a resistance imparting unit (60) operatively connected to the movement arm, a pair of handles (sleeves on arms in fig. 1), a pair of extension members (54) attached to the handles so that the handles may rotate longitudinally, (handles are sleeves which can rotate), wherein the extension members are attached to the movement arm such that each extension member is free to at least partially rotate relative the movement arm in a vertical longitudinal, and transverse axes, and the extension members are of sufficient length and the extension members are

attached to the movement arm so that the handles can be separated by a distance. Huang discloses the claimed invention except for the exact length of the extension members; however, Huang illustrates the extension arm roughly half the length of the user, which would inherently place the extension members in the length range of 8 to 48 inches.

8. Referring to claim 13, Huang discloses a unit that varies the resistance imparted to the exerciser along the stroke path (resistance increases as user moves since band is stretched).

9. Referring to claim 14, Huang discloses a four bar linkage that varies the resistance (including movement arm, resistance band, and (41, 47).

10. Referring to claim 15, Huang discloses a swing link (271) pivotally connecting the linkage to the frame.

11. Claims 1, 2, 5-10, and 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Huang. Referring to claim 1, Jones discloses a frame, a seat assembly (10) attached to the frame, a movement arm (47) pivotally attached to the frame an movable along longitudinal stroke path, a resistance imparting unit (51) operatively connected to the movement arm to provide resistance to the movement arm as it moves from the forward position to the rearward position, a pair of handles (48), a pair of extension members (45, 46) each of which is attached to a respective handle such that each handle is free to rotate about a longitudinal axis. Jones does not disclose that extension members are free to partially rotate about axes. Huang teaches a rowing machine with extension members connected to a movement

arm that are free to partially rotate about an axis, citing that it is advantageous to provide variety in exercise (col. 1, lines 48-55 and col. 2, line 66 – col. 3, line 15). Therefore it would have been obvious to on having ordinary skill in the art to have the extension members of Jones free to partially rotate about longitudinal, transverse, and vertical axes in order to provide variety in exercise. Furthermore, it appears that the arms are capable of moving apart at least 24 inches. The feature of having the handles distanced 24 inches is a design consideration.

12. Referring to claim 2, Jones, as modified above discloses the resistance imparting means comprising a weight stack (see fig. 2).

13. Referring to claim 5, Jones as modified above discloses each handle attached to the respective extension member with a rotary bearing (col. 2, lines 42-45).

14. Referring to claim 6, Jones as modified above discloses a unit that varies the resistance imparted to the exerciser by the resistance imparting unit along the stroke path. (As best understood by examiner).

15. Referring to claim 7, Jones discloses the unit that varies resistance includes a four bar linkage (44, 47, 60, 62).

16. Referring to claim 8, Jones discloses a swing link (62).

17. Referring to claim 9, Jones discloses the resistance imparting unit is a weight stack and the weight stack is interconnected to the movement arm (indirectly) via a belt (59) engaging a pulley (65) attached to the swing link.

18. Referring to claim 10, Jones discloses a frame, a seat assembly (10) attached to the frame, a movement arm (47) pivotally attached to the frame an movable along

longitudinal stroke path, a resistance imparting unit (51) operatively connected to the movement arm to provide resistance to the movement arm as it moves from the forward position to the rearward position, a pair of handles (48), a pair of extension members (45, 46) each of which is attached to a respective handle such that each handle is free to rotate about a longitudinal axis. Jones does not disclose that extension members are free to partially rotate about axes. Huang teaches a rowing machine with extension members connected to a movement arm that are free to partially rotate about an axis, citing that it is advantageous to provide variety in exercise (col. 1, lines 48-55 and col. 2, line 66 – col. 3, line 15). Therefore it would have been obvious to on having ordinary skill in the art to have the extension members of Jones free to partially rotate about longitudinal, transverse, and vertical axes in order to provide variety in exercise. Furthermore, Jones discloses the claimed invention except for the exact length of the extension members; however, Jones illustrates the extension arm roughly half the length of the user, which would inherently place the extension members in the length range of 8 to 48 inches.

19. Referring to claim 12, Jones discloses the handle connected to the extension members via a sleeve bearing (see fig. 2).

20. Referring to claim 13, Jones discloses the unit that varies resistance includes a four bar linkage (44, 47, 60, 62).

21. Referring to claim 14, Jones discloses a swing link (62).

22. Referring to claim 15, Jones discloses the resistance imparting unit is a weight stack and the weight stack is interconnected to the movement arm (indirectly) via a belt (59) engaging a pulley (65) attached to the swing link.

23. Referring to claim 16, Jones discloses the resistance imparting unit is a weight stack and the weight stack is interconnected to the movement arm (indirectly) via a belt (59) engaging a pulley (65) attached to the swing link.

24. Claims 4 and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Huang as applied to claims 1 and 10 respectively above, and further in view of Rawls. Referring to claims 4 and 11, Jones as modified by Huang above disclose the claimed invention except for the specific manner in which the extension members are connected to the movement member. Rawls discloses a rowing device wherein the user engaged handle is connected to a movement member via a universal joint (general term encompassing ball joints) and states that it is advantageous due to the ability to freely rotate the handle allowing variance of exercise. (Col. 9, line 42 – line 61). Therefore it would have been obvious to the skilled artisan to have the user engaging extension members of the modified Jones device be connected to the movement member via a universal joint in order to allow a user to exercise at different angles.

Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Habing	U.S. 5,437,589
Simonson	U.S. 5,620,402
Mester	U.S. 3,966,201
Gall	U.S. 4,563,000
Beauchamp	U.S. 6,264,585

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

NICHOLAS D. LUCCHESI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

fcm
September 21, 2003